

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA
Plaintiffs

v.

ELIAS GONZALEZ
Defendant

CIVIL NO.: 19-1353

Civil monetary penalty pursuant to
19 U.S.C. § 1526(f)

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, the United States of America, U.S. Customs and Border Protection (CBP), and by and through the undersigned attorneys very respectfully STATES, ALLEGES AND PRAYS:

NATURE OF THE ACTION

1. This action is brought pursuant to 19 U.S.C. Section 1526(f), to recover a civil monetary penalty in the amount of \$70,525.00 against defendant Elias Gonzalez, for violations of 19 U.S.C. Section 1526, for importing into the United States merchandise of foreign manufacture when such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States.

JURISDICTION AND VENUE

2 This Honorable Court has jurisdiction and venue over this matter pursuant to 28 U.S.C., Section 1355. The facts underlying this action took place on or about September 25, 2014, at the Luis Muñoz Marín International Airport, in Carolina, Puerto Rico, when CBP officers performed an inbound inspection of mail shipments at the DHL warehouse.

PARTIES

3 The United States of America brings this action on behalf of the United States Customs and Border Protection (CBP), an agency of the United States that is primarily tasked with regulating and facilitating international trade, collecting import duties, and enforcing U.S. regulations, including trade, drug, and immigration laws.

4 Elias Gonzalez, whose last known mailing address is Urb. El Cortijo, Calle 3 #C-3, Bayamon, Puerto Rico 00956, was the intended receiver of a DHL package, containing counterfeit merchandise, that was seized by CBP officers.

FACTS

5 On September 25, 2014 while performing IPR Operation of mail shipments at the DHL Cargo warehouse at the Luis Muñoz Marín Airport, CBP officers detained and inspected a DHL package with airway bill #4715404654 for suspicion of importing counterfeit merchandise. The DHL package was addressed to Defendant, Elias Gonzalez, and the sender was Chijanghuihua Electronics Co. Ltd., from Hong Kong, China.

6 Inside the package a commercial invoice was found that identified the Defendant as the receiver and describing the merchandise as “WATCH”, the quantity as 250, at a total declared value of \$625.00.

7. Upon further inspection, CBP officers discovered a total of 255 watches. There were 100 Pandora watches and 155 Mulco watches. CBP seized only the Mulco watches (hereinafter the merchandise), which are protected by Customs Recordation Number TMK 14-00719 and U.S. Patent and Trademark Office Registration Number 3591872.

8. Based on field findings, the merchandise was deemed counterfeit, being appraised by a CBP's Import Specialist at \$70,525.00, as manufacturer's suggested retail price, if these had been genuine.

9. On November 5, 2014, CBP issued to the Defendant a Notice of Seizure of the merchandise. This was followed by a Notice of Penalty or Liquidated Damages Incurred and Demand for Payment that was issued on August 26, 2015, in the amount of \$70,525.00 against the Defendant, pursuant to 19 U.S.C. Section 1526(f).

10. In efforts to reach an out of court payment of this penalty, Plaintiff sent demand letters to Defendant, via certified mail, to his/her known address: Urb. El Cortijo, Calle 3 #C-3, Bayamon, Puerto Rico 00956, on June 19, 2017 and June 14, 2018. Nevertheless, to date, Plaintiff has not received response or payment from the Defendant.

PRAYER FOR RELIEF

11. The United States refers to and incorporates by reference, the allegations contained in paragraphs 1 through 10 of this complaint as though fully set forth herein.

12. Anticounterfeiting Consumer Protection act (ACPA), codified at Section 1526 of title 19 of the United States Code, provides protection to registered trademark holders by directing the seizure and forfeiture of counterfeit trademark merchandise imported into the United States and the issuance of civil penalties against violating importers.

13. Pursuant to Section 1526(f) the civil penalty to be issued for a first seizure, “shall not be more than the value that the merchandise would have had if it were genuine, according to the manufacturer’s suggested retail price”. Based on the foregoing, demand is made for the total amount of \$70,525.00.

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against Defendant, Elias Gonzalez for payment of a civil monetary penalty in the amount of \$70,525.00, and that the Court award such other costs and further relief as it may deem just and proper under law and equity.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of April, 2019.

ROSA E. RODRIGUEZ-VELEZ,
United States Attorney

s/David O. Martorani-Dale

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JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
AUSA David O. Martorani-Dale
US Attorney's Office, 350 Chardon Ave, Suite 1201
San Juan, PR 00918 Ph. 787-766-5656

DEFENDANTS

Elias Gonzalez

County of Residence of First Listed Defendant Bayamon, PR
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Section 10 of the Anti counterfeiting Consumer Protection Act 19 USC Section 1526(f)
Brief description of cause:
Civil action to recover CBP administrative fine that has become final

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
70,525.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/12/2019

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI): Martorani-Dale, David O.

USDC-PR Bar Number: 226004

Email Address: david.o.martorani@usdoj.gov

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff: United States of America

Defendant: Elias Gonzalez

2. Indicate the category to which this case belongs:

☒ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☐ Yes

☒ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☒ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☒ No

Date Submitted: 04/12/2019

rev. Dec. 2009

Print Form

Reset Form